

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DENNIS BRITTENHAM, # 252929,

Plaintiff,

Case No. 10-cv-10484

v.

HONORABLE STEPHEN J. MURPHY, III

PEOPLE OF THE STATE
OF MICHIGAN,

Defendant.

_____ /

**OPINION AND ORDER STRIKING COMPLAINT
AND DISMISSING CASE FOR FAILURE TO CORRECT DEFICIENCIES**

This is a civil rights case filed pursuant to 42 U.S.C. § 1983. Pro se Plaintiff Dennis Brittenham seeking damages from Defendant for kidnapping him from a county jail. When he filed his complaint, Plaintiff did not sign the complaint, and indicated his refusal to do so. Additionally, Plaintiff neither paid the required \$350.00 filing fee for this action nor submitted a proper application to proceed without the prepayment of the filing fee as permitted by 28 U.S.C. §§ 1915(a)(1)-(2). Consequently, on February 23, 2010, the Court ordered that Plaintiff, within 30 days of the date of the order: 1) sign the complaint; and 2) submit either the required fee or an application to proceed *in forma pauperis*. Docket no. 2. The Court stated that failure to do so would result in the Court striking the unsigned complaint under Fed. R. Civ. P. 11(a). Plaintiff's failure would also result in the Court presuming he was not proceeding *in forma pauperis*, assessing the entire filing fee, and ordering the case be dismissed for failure to prosecute. See *McGore v. Wigglesworth*, 114 F.3d 601, 605 (6th Cir. 1997).

Plaintiff has failed to comply with the Court's order. Accordingly, the Court will strike his complaint and dismiss his case for failure to prosecute. The dismissal will be without

prejudice. Because Plaintiff's action is dismissed under such circumstances, it will not be reinstated even if he subsequently pays the filing fee. *Id.* The Court further concludes that an appeal from this order would be frivolous and cannot be taken in good faith. See 28 U.S.C. § 1915 (a)(3); *McGore*, 114 F.3d at 610-11.

WHEREFORE it is hereby **ORDERED** that Plaintiff's complaint is **STRICKEN** and his complaint is **DISMISSED without prejudice** for failure to prosecute.

THE COURT CERTIFIES that, because it would be frivolous, an appeal cannot be taken in good faith.

SO ORDERED.

s/Stephen J. Murphy, III
STEPHEN J. MURPHY, III
United States District Judge

Dated: April 12, 2010

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on April 12, 2010, by electronic and/or ordinary mail.

s/Alissa Greer
Case Manager